

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:06-CR-147-1-BR

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| UNITED STATES OF AMERICA | ) |                                    |
|                          | ) |                                    |
| v.                       | ) | <b>AMENDED</b>                     |
|                          | ) | <b>PETITION FOR WRIT OF HABEAS</b> |
|                          | ) | <b>CORPUS AD TESTIFICANDUM</b>     |
|                          | ) |                                    |
| XAVIER VIDAL JENNETTE,   | ) |                                    |
| Defendant.               | ) |                                    |
| _____                    | ) |                                    |

COMES NOW Defendant Xavier Vidal Jennette, by and through his undersigned counsel of record, petitioning the Court to issue a writ of habeas corpus ad testificandum with respect to Anthony Durand Wallace for Monday 4 April 2011 and averring in support thereof that:

1. Mr. Jennette intends to call Mr. Wallace as a fact witness at Mr. Jennette's resentencing hearing, currently set for Monday 4 April 2011 at 11 AM before the U.S. District Court in Raleigh, North Carolina ([ECF No. 253](#));

2. The grand jury indicted Mr. Jennette and Mr. Wallace as co-conspirators and co-defendants in this matter in 2006 ([ECF No. 62](#));

3. Mr. Wallace testified against Mr. Jennette at Mr. Jennette's 2006 trial;

4. At Mr. Jennette's sentencing hearing in March 2007, the Court applied a two-level enhancement for obstruction of justice on the ground that Mr. Jennette's exculpatory 2006 trial testimony constituted perjury, sentencing Mr. Jennette to a total term of imprisonment of 121 months ([ECF No. 150](#));

5. In July 2010, the Fourth Circuit vacated Mr. Jennette's sentence (for abuse of discretion in denying Mr. Jennette's first motion for substitute counsel) and remanded to this Court for resentencing ([ECF No. 229](#));

6. In October 2010, the Affidavit of Anthony Durand Wallace ([ECF No. 246-1](#)), attached hereto, arrived at undersigned counsel's office via U.S. Mail;

7. After reviewing Mr. Wallace's affidavit, Mr. Jennette moved the Court to continue his resentencing hearing so that undersigned counsel could investigate the contents of Mr. Wallace's affidavit ([ECF No. 246](#)), which motion the Court granted ([ECF No. 247](#));

8. In December 2010, the undersigned spoke with Mr. Wallace by telephone, during which telephone conversation Mr. Wallace identified himself as the affiant, verified the truth of his affidavit's contents, and confirmed his willingness to testify to that effect under oath in Raleigh, North Carolina;

9. On or about January 2011, however, Mr. Wallace contacted the undersigned by telephone and informed him that he

did not want to be "writ'd-out" of USP McCreary for any reason for fear that his fellow inmates at USP McCreary would identify him as a cooperator and impose adverse consequences on him upon his return;

10. Joseph E. Zeszotarski, Jr., Esq., who served as Mr. Wallace's court-appointed trial counsel in 2006-07, advised the undersigned earlier this year that he no longer represents Mr. Wallace;

11. On Monday of this week, moreover, the Fourth Circuit entered the mandate ([ECF No. 254](#)) for its 17 February 2011 affirmance ([ECF No. 251](#)) of this Court's imposition of a 24-month term of imprisonment on Mr. Wallace for his violation of the terms and conditions of his supervised release ([ECF No. 225](#));

12. Alan DuBois, Esq., of the Office of the Federal Public Defender, represented Mr. Wallace on his appeal to the Fourth Circuit from this Court's revocation of his term of supervised release;

13. The undersigned advised Mr. DuBois by telephone this afternoon of Mr. Jennette's intent to file the instant amended petition, as well as of the petition that Mr. Jennette filed earlier today and the Court's order denying same without prejudice;

14. Mr. DuBois advised the undersigned that his representation of Mr. Wallace continues (and, for that reason, the undersigned has served this amended petition on Mr. Wallace via email to Mr. DuBois);

15. The contents of Mr. Wallace's attached affidavit and the above-recited substance of his December 2010 telephone communication with the undersigned gainsay that Mr. Jennette's exculpatory testimony at his 2006 trial constituted perjury, and Mr. Jennette seeks to adduce such evidence from Mr. Wallace at Mr. Jennette's resentencing hearing next month; and

16. The federal Bureau of Prisons detains Mr. Wallace at the U.S. Penitentiary in McCreary, Kentucky, whose address is:

USP McCreary  
United States Penitentiary  
330 Federal Way  
Pine Knot, Kentucky 42635.

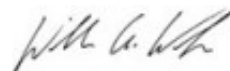
Respectfully submitted, this the 16th day of March 2011, by,

/s/ Samuel A. Forehand  
Samuel A. Forehand  
Counsel for Defendant  
Samuel A. Forehand, P.A.  
5 West Hargett Street, Suite 201  
Post Office Box 2626  
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N.C. State Bar No. 35284

**WRIT OF HABEAS CORPUS AD TESTIFICANDUM**

The instant petition is granted and the above-named custodian, as well as the United States Marshal for this district, his deputies, and other United States Marshals and their deputies, is and are directed to produce the named Anthony Durand Wallace, in civilian clothes, on the date, at the time, and in the place recited above, and thereafter to maintain the said detainee within the jurisdiction of this Court pending the satisfaction of this writ or the further orders of the Court.

Date: March 17, 2011



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William A. Webb  
United States Magistrate Judge

# **CERTIFICATE OF SERVICE**

The undersigned has this date electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF user:

Clay Wheeler, Esq.  
Office of the U.S. Attorney  
Suite 800  
310 New Bern Avenue  
Raleigh, North Carolina 27601-1461.

In addition, the undersigned has this date served the foregoing upon Anthony Durand Wallace by email to his counsel as follows:

Alan DuBois, Esq.  
Office of the Federal Public Defender  
Raleigh, North Carolina  
[Alan.DuBois@fd.org](mailto:Alan.DuBois@fd.org)

This the 16th day of March 2011.

/s/ Samuel A. Forehand  
Samuel A. Forehand  
Counsel for Defendant  
Samuel A. Forehand, P.A.  
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